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1 2.1 Appellant Marlys Owen-Jones was a Workers Compensation Adjudicator 4 and permanent
2 employee for Respondent Department of Labor and Industries. Appellant and Respondent are
3 subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358
4 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on April 5, 2001.

5
6 2.3 Appellant was employed as a Workers' Compensation Adjudicator (WCA) 4. Appellant's
7 responsibilities included performing audits of self-insured businesses to ensure compliance.
8 Appellant's position required extensive travel, use of a personal computer, traveling with a laptop,
9 driving a vehicle to audit businesses, and carrying work related materials ranging from 20 to 30
10 pounds.

11
12 2.4 In 1996, Appellant was diagnosed with multiple myeloma. Due to her medical condition,
13 Respondent placed Appellant on a medical leave of absence beginning February 1996. Based on
14 Appellant's condition, Respondent extended Appellant's leave of absence on several occasions.

15
16 2.5 On May 27, 1997, Appellant's physician, Dr. Lonnie Harper, provided the department with
17 a statement indicating that Appellant would be able to return to work in February 1998.
18 Respondent engaged in subsequent communication with Appellant and her physicians about
19 Appellant's return to work.

20
21 2.6 In January 1998, Respondent asked Appellant's physician whether Appellant was able to
22 perform the duties of her position as a Workers' Compensation Adjudicator 4. The department
23 specifically asked which duties Appellant was able to perform and whether Appellant would be able
24 to perform her duties with reasonable accommodation. The department provided the physician with
25
26

1 a job description, the class specification for a Workers' Compensation Adjudicator and the essential
2 job functions of her position.

3
4 2.7 On February 23, 1998, Physician's Assistant Muriel Fay Siadak and Dr. Keith Sullivan
5 responded to the department's request. Their primary concern was to decrease the risk of infection
6 while Appellant was on immunosuppressive therapy, and they made the recommendations that
7 Appellant:

- 8 • Work at home with a keyboard equipped with decreased nerve function in the
9 fingertips (i.e. voice activation), at one to two (1-2) hours per day to be
10 increased over the next two to three (2-3) months as tolerated.
- 11 • Continue to work at home until able to work six hours a day before attempting
12 to return to the office on a slowly increasing schedule.

13 2.8 In addition to the recommendation by Appellant's physicians, Appellant established
14 parameters for her return to work in which she indicated that she was willing to accept a position at
15 no lower than a range 49, step K and which was located in the Olympia/Lacey/Tumwater
16 geographical area. Respondent conducted a review of the agency's vacancies to locate a position
17 that met both the medical recommendations and Appellant's requirements. The department was
18 unable to locate a position that met these requirements, and they subsequently began the separation
19 process.

20
21 2.9 By letter dated May 6, 1998, Douglas Connell, Assistant Director for Insurance Services
22 Division, formally notified Appellant of her separation due to disability, effective July 6, 1998.
23 However, after learning that Appellant's condition seemed to be improving, Mr. Connell rescinded
24 the disability separation by letter dated July 29, 1998, to explore further accommodation options.
25
26

1 2.10 On February 17, 1999, Respondent met with Appellant to discuss further accommodation
2 possibilities and a phased-in return to work plan.

3
4 2.11 On April 30, 1999, Respondent requested further medical information. On May 19, 1999,
5 Dr. Paul A. Robertson with the Western Washington Cancer Treatment Center indicated that
6 Appellant could not work in a communal office due to her history of compromised immune system.
7 Dr. Robertson indicated that Appellant's condition could improve in the future when
8 immunosuppressing medication was decreased.

9
10 2.12 By letter dated June 1, 1999, Dr. Robertson indicated that Appellant's progress and
11 improvement was slow, that she was not likely to completely regain her former health, that she had
12 difficulty lifting more than five to ten pounds and that she had significant susceptibility to infection
13 and would require significant isolation from the public as well as coworkers. He also indicated that
14 Appellant would have a slow progression in terms of the number of hours she could work.
15 Appellant continued to have considerable limitations using her hands.

16
17 2.13 On August 24, 1999, Respondent met with Appellant to discuss reasonable accommodation
18 and the possibility of using interactive voice technology to perform her duties. In addition,
19 Respondent also wanted Appellant to review other job classifications for job placement. However,
20 on September 10, 1999, Appellant's husband informed Respondent that Appellant had been
21 hospitalized. Therefore, plans for accommodation were suspended.
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23
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1 2.14 On November 5, 1999, Respondent again requested an update on Appellant's condition. By
2 letter dated February 7, 2000, Dr. Robertson responded that Appellant continued to experience
3 ongoing immunosuppression, which resulted in increased susceptibility to infections. Dr.
4 Robertson expressed his opinion that Appellant would need to work in isolation to diminish the risk
5 of further infection and work no more than 20 hours per week with no assigned daily hours while
6 working from home.

7
8 2.15 On February 9, 2000, Respondent met with Appellant and informed her that they were
9 unable to locate and offer Appellant a position which she could perform from home on an
10 unscheduled part-time basis and which met her physical capabilities.
11

12
13 2.16 By letter dated August 31, 2000, Dr. William Bensinger, with the Fred Hutchinson Cancer
14 Research Center, updated Respondent on Appellant's condition. Dr. Bensinger indicated that
15 Appellant was experiencing mild back pain and had continued difficulty with peripheral neuropathy
16 which impeded her ability to perform keyboard work. However, Dr. Bensinger believed that
17 Appellant could work using a voice-activated system for word processing and that she could work a
18 full day. Dr. Bensinger expressed his opinion that Appellant could return to work in an open
19 environment among other people because her immune system had recovered to "near normal levels"
20 and she had experienced no infection in the prior six months.
21

22
23 2.17 On October 25, 2000, Respondent met with Appellant and her representatives to discuss
24 reasonable accommodation options. During the meeting, Appellant requested:

- 25 • immediate but gradual return to full-time work;
- 26

- assignment to a vacant Workers' Compensation Adjudicator 3 (in-training) position;
- first consideration for a Workers' Compensation Adjudicator 4 position after her successful completion of the 30 month WCA training program; and
- A salary y-rate to the Workers' Compensation Adjudicator 4 salary range prior to her medical leave of absence in January 1996 (range 49, step K, \$3,682 monthly).

2.18 Respondent conducted a subsequent search of positions for which Appellant was qualified.

In performing the search, Respondent considered Appellant's identified limitations and restrictions: inability to perform keyboard/computer work; back pain impacting sedentary and stationary work assignments; lifting restriction of 10 pounds not to be done more than five time during the work day; and no operation of a vehicle if taking medication for back pain.

2.19 On November 14, 2000, Mr. Connell offered the following accommodations to Appellant:

- Return to work on a gradual return to work program in an interim assignment as an Office Assistant with commensurate salary (range 28, step K);
- Retraining on the agency's current computer system;
- Use of a voice interactive software program;
- Accommodated workspace to accommodate Appellant's back condition;
- Beginning January 2001, permanent placement in an assignment as a Workers' Compensation Adjudicator 3 (in-training) position. Appointment to the adjudicator position contingent on Appellant's ability to successfully demonstrate an ability to work full-time performing the essential functions of the Office Assistant position using the voice activated software;
- Upon completion of the 36 month in-training program, classification to WCA 1 for nine months; WCA 2 for 15 months and final placement at the WCA 3 classification.

2.20 Mr. Connell instructed Appellant to have her physician review the proposal and the job description/analysis and inform the department of any limitations or restrictions that would prevent Appellant from performing any of the essential functions of the position.

1 2.21 On November 20, 2000, Appellant informed Respondent that she would accept the
2 accommodation proposal and would report to work on November 28, 2000. The following day,
3 Appellant called the department's Office of Human Resources and reported that she was unable to
4 report to work as agreed due to a family emergency. Mr. Connell extended Appellant's return to
5 work date.

6
7 2.22 On December 29, 2000, Mr. Connell granted an additional request for delay due to
8 Appellant's family emergency and because Appellant had not received feedback from her
9 physicians regarding the accommodation proposal.
10

11
12 2.23 On January 18, 2001, Dr. Bensinger responded to the accommodation request and informed
13 Respondent that Appellant would have difficulty performing job tasks that were repetitive in nature
14 such as using a mouse. Physician's Assistant Heather Hooper, with the Fred Hutchinson Cancer
15 Research Center, also wrote Respondent after reviewing the job description, analysis and essential
16 functions of the proposed WCA 3 position. Ms. Hooper expressed concerns with Appellant
17 performing keyboard tasks, writing:
18

19 I have no doubt that she [Appellant] will resort to unsafe work practices ie. (sic)
20 keying on the computer to maintain performance goals. I am unable to predict the
21 physical damage that might be caused to Miss Owen-Jones if she should resort to
"keying" in order to meet the department of Labor and Industries guidelines for
success. . . .

22 None of these options are acceptable. In comparison to other trainees, Miss
23 Owen-Jones will start her training with a disability secondary to her peripheral
24 neuropathy and multiple myeloma and the additional handicap of an imperfect
25 accommodation with the use of the Linux computer system in conjunction with
26 the voice activated system. . . . I believe the personnel of human resources and
computer support personnel [should] review this proposed accommodation and
make further adjustments to allow Miss Owen-Jones to meet the dictated goals
without having to resort to practices that will exacerbate her underlying problems.

1
2 2.24 Neither Dr. Bensinger nor Ms. Hooper indicated whether modifications or accommodations
3 could be made to the WCA position that enable Appellant to perform the essential functions of the
4 position.

5
6 2.25 Prior to implementing Appellant's separation due to disability, Mr. Connell, Appellant's
7 appointing authority, consulted with human resources staff. Based on the information he received
8 from them, which included the documentation from Dr. Bensinger and Ms. Hooper, in which they
9 concluded that Appellant could not perform the essential functions of the WCA position, Mr.
10 Connell determined that separating Appellant due to her disability was the appropriate action.
11 Furthermore, Mr. Connell considered the department's attempts to use interactive voice technology
12 to modify the keyboarding tasks required by Appellant's job. However, the pilot program was not
13 successful because the interactive voice technology software was not compatible with the agency's
14 computer system/software and laptop computers used for travel. Therefore, it did not result in a
15 feasible accommodation.
16

17
18 2.26 By letter dated March 14, 2001, Mr. Connell notified Appellant of her separation, effective
19 May 14, 2001 due to disability and the department's inability to accommodate her physical
20 disability.
21

22 **III. ARGUMENTS OF THE PARTIES**

23 3.1 Respondent argues that it relied on feedback from Appellant's medical providers that
24 Appellant was disabled and unable to perform the essential duties of her position. Respondent
25 asserts that it conducted a review of vacant positions but was unsuccessful in locating a position
26

1 which met Appellant's accommodation requirements and the additional conditions outlined by
2 Appellant, which included a minimum salary requirement, having her former salary y-rated for 36
3 months, and a guaranteed promotion regardless of whether she passed the WCA in-training
4 program. Respondent argues that it has complied with WAC 356-35-010 by making a good faith
5 effort to accommodate Appellant's disability.

6
7 3.2 Appellant did not appear and no representative appeared on her behalf.

8 9 IV. CONCLUSIONS OF LAW

10 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
11 herein.

12
13 4.2 At a hearing on appeal of a disability separation, the appointing authority has the burden of
14 supporting the action that was initiated. WAC 358-30-170. Respondent has the burden of proving
15 that Appellant was unable to perform the duties of the position as specified in the letter of
16 separation and that reasonable accommodation cannot be provided. Smith v. Employment Security
17 Dept., PAB No. S92-002 (1992).

18
19 4.3 The issue here is whether Respondent complied with the provisions of WAC 356-35-010
20 when it separated Appellant from her position as a Workers' Compensation Adjudicator 4 due to
21 her disability. WAC 356-05-120 defines a disability as "[a]n employee's physical and/or mental
22 inability to perform adequately the essential duties of the job class." After Appellant's diagnosis
23 and treatment for multiple myeloma, Appellant suffered from various medical problems, including a
24 peripheral neuropathy in her hands. It is undisputed that Appellant was restricted to lifting a
25 maximum of no more than 10 pounds at five times per day and that she suffered from hand tremors
26 and could not perform repetitive job tasks such as using a mouse/keyboarding. Respondent

1 reasonably relied in information from Appellant's medical providers, including Dr. Bensinger and
2 Physician's Assistant Heather Hooper, that Appellant could not perform the essential duties of her
3 position. Therefore, Appellant's condition meets the definition of a disability.

4
5 4.4 WAC 356-35-010(1) provides, in part, that an appointing authority "may initiate a disability
6 separation of a permanent employee only when reasonable accommodations cannot be provided. . ."
7 Respondent conducted a good faith search for alternative options that would reasonably enable
8 Appellant to perform the essential duties of her position. Respondent presented Appellant's
9 medical providers with the proposed adjustments. However, Respondent ultimately received
10 feedback that Appellant could not perform the essential functions of either her Workers'
11 Compensation Adjudicator 4 position or the proposed in-training Workers' Compensation
12 Adjudicator position. Therefore, the appointing authority reasonably concluded that
13 accommodation could not be provided which would enable Appellant to perform the essential
14 duties of her position.
15
16

17
18 4.5 Respondent has met its burden of proof that Appellant could not perform the essential duties
19 of her position and that reasonable accommodation could not be provided. Therefore, the disability
20 separation of Marlys Owen-Jones should be affirmed, and her appeal denied.
21

22 **V. ORDER**

23 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Marlys Owen-Jones is denied.
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26 DATED this _____ day of _____, 2002.

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